

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF DELAWARE**

IN THE MATTER OF THE COMMISSION'S	)	
JURISDICTION OVER ELECTRIC VEHICLE	)	
CHARGING STATIONS AND SERVICE	)	PSC DOCKET NO. 19-0377
PROVIDERS	)	
(FILED JUNE 11, 2019)	)	
	)	

ORDER NO. 9438

**FOR ADMISSION OF DELMARVA POWER AND LIGHT COMPANY, TESLA, INC.,  
ALLIANCE FOR TRANSPORTATION ELECTRIFICATION, CHARGEPOINT, INC.,  
CAESAR RODNEY INSTITUTE, DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL AND THE NATURAL RESOURCES DEFENSE  
COUNCIL AS INTERVENORS**

AND NOW, this 24<sup>th</sup> day of July 2019, pursuant to the authority granted to me by assignment of this Docket in PSC Order No. 9418, this Hearing Examiner, having considered the Petitions to Intervene (“the Petitions”) filed by Delmarva Power and Light Company (“Delmarva”), Caesar Rodney Institute (“CRI” or “Caesar Rodney”), The Department of Natural Resources and Environmental Control (“DNREC”), Tesla, Inc. (“Tesla”), Alliance for Transportation Electrification (“The Alliance”), ChargePoint, Inc. (“ChargePoint”) and The Natural Resources Defense Council (“NRDC”), issues this Order.

**I. BACKGROUND**

1. On June 11, 2019, Staff filed a Petition for relief regarding the regulation of electric vehicle charging stations.

2. On June 18, 2018, Tesla filed a letter in support of the Staff’s petition to the Public Service Commission (“PSC” or the “Commission”) for relief regarding the regulation of electric vehicle charging stations.

3. On, June 19, 2019, the Commission opened this docket with PSC Order No. 9418. With this Order the Commission set July 16, 2019 as the deadline for filing Petitions for Leave to Intervene in this Docket.

4. On June 21, 2019, CRI Center for Energy Competitiveness filed a Petition for Leave to Intervene as a party to this Docket.

5. On June 27, 2019, The Delaware Division of the Public Advocate (“DPA”) filed a Petition for Leave to Intervene in this Docket pursuant to its statutory right to intervene in matters before the Commission<sup>1</sup>.

6. On July 5, 2019, Delmarva filed a Petition for Leave to Intervene as a party to this Docket.

7. On July 5, 2019, DNREC filed a Petition for Leave to Intervene as a party to this Docket.

8. On July 10, 2019, DPA filed an Opposition to the DNREC’s Petition to Intervene in this Docket.

9. On July 15, 2019, Tesla filed a Petition for Leave to Intervene as a party to this Docket.

10. On July 16, 2019, The Alliance filed a Petition for Leave to Intervene as a party to this Docket.

11. On July 16, 2019, ChargePoint filed a Petition for Leave to Intervene as a party to this Docket.

12. On July 16, 2019, NRDC filed a Petition for Leave to Intervene as a party to this Docket.

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<sup>1</sup> 29 Del. C. § 8716.

## **II. EXECUTIVE SUMMARY**

13. Delmarva, Tesla, The Alliance, ChargePoint and NRDC have timely filed Petitions for Leave to Intervene in this Docket pursuant to PSC Rule 2.9 (26 Del. Adm. Code § 1001, Rule 2.9, “Rule 2.9”). There have been no Objections filed to their respective Petitions. Having met the requirements of Rule 2.9, those Petitions for Leave to Intervene are granted.

14. The Petition for Leave to Intervene filed by DNREC, having been objected to by DPA, is continued pending further proceedings in this Docket.

15. The Petition for Leave to Intervene filed by CRI is continued pending the receipt of further requested information from CRI.

## **III. PARTIES' POSITIONS**

16. In Caesar Rodney's Petition for Leave to Intervene, Caesar Rodney states that it is in the public interest because of a particular skill set. David Stevenson, Director for the Center for Energy Competitiveness of Caesar Rodney states that he is uniquely qualified with a degree in Agricultural economics, economic analysis experience as an entrepreneur, as an employee of the Dupont Company, and as an analyst for the Caesar Rodney Institute for the last seven years working on energy and environmental policy, and advocating for free market-based policy. Caesar Rodney is seeking relief that the Commission determines EV charging outlets are outside the regulated electric utility distribution system, and therefore outside the Commission authority.

17. In Delmarva's Petition for Leave to Intervene, Delmarva alleges that it has a direct and immediate interest in this proceeding that will establish the level of oversight the Commission will exercise going forward over electric vehicle charging station and service providers. Delmarva states it will not be adequately represented by the parties to the proceeding because Delmarva is

the only public utility currently authorized to offer electric vehicle charging stations and that their interests pursuant to Rule 2.9 cannot be adequately represented by any other party.

18. In DNREC's Petition for Leave to Intervene, DNREC states that this docket involves policy issues of interest to DNREC, including through its Division of Climate, Coastal & Energy ("DCCE"). DCCE provides an incentive program to Delawareans and Delaware-based businesses for the purchase of electric vehicles and Level 2 charging stations. DNREC has previously intervened on Docket 17-1094 addressing approval of Vehicle Charging program.

19. In DPA opposition to DNREC's intervention, DPA alleges that DNREC cites no statutory authority granting it authority to intervene in proceedings before other state agencies. In the absence of an explicit statutory provision authorizing DNREC to intervene in another agency's proceedings, DPA argues that DNREC's Petition should be rejected. DPA further states that DNREC has not shown that its stated interest is germane to this docket. The DPA does not dispute that DNREC may be interested in this proceeding, but further states that it can satisfy its interest by monitoring the proceedings and providing public comment.

20. In Tesla's Petition for Leave to Intervene, Tesla alleges that as the operator of charging DCFC and Level 2 charging stations in Delaware, Tesla has a direct and substantial business interest in the outcome of this docket. Pursuant to Rule 2.9, Tesla alleges it would not be adequately represented by other parties in these proceedings given its unique position as both a manufacturer of EV and provider of charging infrastructure.

21. In Alliance's Petition for Leave to Intervene, The Alliance states that its interests in the outcome of this proceeding are to ensure that the The Alliance is able to convey its views on transportation electrification and the Commission's oversight of regulated utilities' programs

and tariffs. According to The Alliance, its interest will not be adequately represented by any other party to this docket.

22. In ChargePoint's Petition for Leave to Intervene, ChargePoint alleges its customers represent a significant portion of the established and growing electrical vehicle infrastructure sector in Delaware. ChargePoint alleges the outcome will have direct implications for the operation of Electric Vehicle charging infrastructure in Delaware.

23. In NRDC's Petition for Leave to Intervene, NRDC alleges its interest are distinct and not adequately represented by other parties or intervenors in this docket. NRDC has appeared before state public utility commissions and legislatures regarding public service commission jurisdiction over electric vehicle charging stations. It states that it has written several reports regarding the importance of model utility policies for vehicle electrification and removing barriers for a thriving plug-in vehicle market.

#### **IV. DISCUSSION**

24. Pursuant to Order No. 9418, Section 3, as Hearing Examiner I was "specifically delegated the authority to grant or deny petitions seeking leave to intervene..."<sup>2</sup>

25. The standard for intervention in proceedings before the Commission is provided in PSC Rule 2.9. In particular, Rule 2.9 provides that parties seeking leave to intervene must set forth a description of their interest in the outcome, a concise statement of why they will not be represented by any other party and/or why their participation is in the public interest and finally a description of the relief they request. The courts have recognized that the Commission's practice has been to grant intervention liberally.<sup>3</sup>

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<sup>2</sup> Del. PSC Or. No. 9418, Section 3

<sup>3</sup> See *Chesapeake Utilities Corporation v. Delaware Public Service Commission*, C.A. No. K17A-01-001 WLW (Del. Super. Ct. 2017) at 9.

26. The Petitions filed by Delmarva, Tesla, The Alliance, ChargePoint and NRDC all recite with particularity why they are entitled to intervene as provided in Rule 2.9. Their respective positions are summarized above in Section III. I agree that these organizations have successfully alleged their entitlement to intervene in this Docket pursuant to Rule 2.9. No party has objected to their respective Petitions.

27. The Petition of DNREC has been objected to by DPA. Accordingly, I believe that the resolution of this objection should await further proceedings in this docket.

28. With respect to the Petition of CRI, I have requested from CRI additional information before deciding upon its Petition.

#### **IV. DECISION**

29. Accordingly, having determined that each respective Petition for Leave to Intervene filed by Delmarva, Tesla, The Alliance, ChargePoint and NRDC, respectively, complies with Rule 2.9 and no party has objected, their Petitions for Leave to Intervene are each **GRANTED.**

30. Representatives of Delmarva, Tesla, The Alliance, ChargePoint and NRDC – along with DPA - shall be added to the Service List for this Docket.

31. The Petition for Leave to Intervene by DNREC is continued pending further proceedings in this Docket.

32. The Petition for Leave to Intervene by CRI is continued pending further proceedings in this Docket.

/s/ Glenn C. Kenton

Glenn C. Kenton, Esq.  
Hearing Examiner